IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.498 OF 1993

The State of Maharashtra ...Appellant.

v/s

Mangesh Janardan Gang-Naik ...Respondent

---

Mr. D.P. Adsule, APP for the State.

Mr. Sachin B. Shetye for the respondent.

CORAM: V.M. KANADE, J.
DATE : 23rd February, 2005

ORAL JUDGMENT:

1. Heard the learned APP for the State and the learned Counsel appearing for the respondent.

2. The State has preferred this appeal against the judgment and order passed by the Additional Sessions Judge, Sawantwadi. By the said judgment and order dated 26/5/1993 passed in Criminal Appeal No.44 of 1991, the Additional Sessions Judge was pleased to acquit the accused of the offence punishable under section 324 of the Indian Penal Code. By the said Judgment and Order, the Sessions Judge was pleased to set aside the order of conviction passed by the JMFC, Malvan.

3. Brief facts are that on 14/11/1990, at about 8.00 p.m., the appellant abused mother of the complainant. There was a scuffle between the two and the accused inflicted injuries on the left wrist of the complainant with the sharp cutting instrument. A complaint was filed. The complainant was referred to the hospital. He was examined by the doctor. A case was registered being CR No.100 of 1990. The statements of the witnesses were recorded by the Investigating Officer. A charge was framed against the accused - the respondent herein under section 324 of the Indian Penal Code. The Trial Court convicted the accused for having committed an offence punishable under section 324 of the Indian Penal Code. The Lower Appellate Court, however, acquitted the accused.

4. The learned APP appearing for the State has taken me through the Judgment and Order of the Sessions Court as also the Trial Court. He has also taken me through the oral and documentary evidence adduced by the prosecution. The Lower Appellate Court has taken a view that the defence taken by the accused appears to be probable and observed that the evidence adduced by the prosecution was not sufficient to come to the conclusion that the respondent had committed the said offence under section 324.

5. From the evidence adduced by the prosecution, it can be seen that, admittedly, the weapon with which the offence was allegedly committed was not recovered at the instance of the accused. Further, though some of the eye witnesses have stated that injury caused to P.W.1 was bleeding injury and there were blood stains on the earth as a result of the said injury, under the spot panchanama the blood stained earth has not been seized or sent for chemical analysis. From the evidence of P.W. 1, 2 and 3, it can be seen that it is an admitted position that the relations between the accused and P.W. 1 - Manoj were not at all cordial. The witnesses which are examined by the prosecution are interested witnesses as their relations with the accused were admittedly strained. From the suggestion which has been put to the Investigating Officer - P.W. 5, it can be seen that though the independent witnesses were available in the neighbourhood, their statements were not recorded by the Investigating Officer. The view, therefore, taken by the Lower Appellate Court is a plausible view and I do not see any reason why this Court should interfere with the finding recorded by the Lower Appellate Court.

Accordingly, the following order is passed:-

O R D E R

. Appeal is dismissed.

. Delay in filing the appeal is condoned.

V.M. KANADE, J.